

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

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HERMAN CUNNINGHAM
Plaintiff,

Case 1:19-cv-02853-TWT-LTW

vs.

RAS CRANE LLC
Defendant.

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Response to RAS Crane LLC's Motion to Dismiss

RAS Crane LLC moved to dismiss Plaintiff's complaint (Dkt. 3) on June 28, 2019. In response, Plaintiff filed an amended complaint (Dkt. 4) on July 10, 2019 which is 12 days after service of the motion to dismiss. Fed. R. Civ. P. 15(a)(1)(B) allows amendments to the complaint as of right within 21 days of being served with a motion to dismiss. This amended complaint superseded the original complaint. See *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1345 n.1 (11th Cir. 1999) ("An amended complaint supersedes an original complaint."). And the amended complaint renders moot the motion to dismiss because that motion seeks to dismiss a pleading that has been superseded. See *Renal Treatment Ctrs. v. Franklin Chevrolet*, No. 6:08-cv-87, 2009 WL 995564, at *1 (S.D. Ga. Apr. 13, 2009) (noting that the motion to dismiss based "on a pleading that [was] entirely irrelevant" was moot where the pleading was superseded by an amended

complaint); *Mizzaro v. Home Depot, Inc.*, No. 1:06-cv-11510, 2007 WL 2254693, at *3 (N.D. Ga. July 18, 2007) (Evans, J.) (dismissing as moot a motion to dismiss addressing the original complaint following defendants' acceding to the filing of an amended complaint).

Plaintiff therefore requests that the court deny as moot RAS Crane LLC's motion to dismiss.

Dated this 10th day of July 2019.

Respectfully submitted,

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